

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
DENNIS M. CAVANAUGH
JUDGE

UNITED STATES POST OFFICE
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NOT FOR PUBLICATION

May 14, 2004

THE ORIGINAL OF THIS LETTER ORDER
IS ON FILE WITH THE CLERK OF THE COURT

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RE: China Minmetals Materials Import and Export Co., Ltd., v. Chi Mei Corp.
Civil Action No. 01-3481 (DMC)

Dear Counsel:

This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge Mark Falk, filed on April 20, 2004, whereby Judge Falk recommended that the motion by Defendant, Chi Mei Corp. ("Defendant"), to dismiss with prejudice pursuant to Rule 78 of the Federal Rules of Civil Procedure be granted. Judge Falk specifically recommended that

Plaintiff China Minmetals Materials Import and Export Co., Ltd.'s claims against Defendant be stricken with prejudice. This matter was decided without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure.

For the reasons set forth below, the Report and Recommendation of Judge Falk granting Defendant's motion dismiss Plaintiff's Complaint with prejudice is **adopted** and **affirmed**. Accordingly, Defendant's motion to dismiss pursuant to Rule 78 is **granted**.

DISCUSSION

Pursuant to 28 U.S.C. § 636(b)(1)(B), a magistrate judge may submit to a district court proposed findings of fact and recommendations concerning dispositive matters. The United States Supreme Court has held that "[w]here a Magistrate makes a finding or ruling on a motion or an issue, his determination should become that of the district court unless specific objection is filed within a reasonable time." Thomas v. Arn, 474 U.S. 140, 150-51 (1985). Section 636(b)(1) and Local Civil Rule 72.1(c)(2) prescribe a ten day period during which a party may object to a Magistrate Judge's report and recommendation. A District Court Judge may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); L. Civ. R. 72.1(c)(2).

In this matter, Judge Falk's Report and Recommendation granting Defendant's motion to dismiss Plaintiff's Complaint was filed on April 20, 2004. No objections to the Report and Recommendation have been filed.

This Court agrees with and adopts without hesitation or modification Judge Falk's reasoning that Defendant is entitled to dismissal. Judge Falk appropriately considered the six factors set forth by the Third Circuit in Poulis v. State Farm Fire & Casualty, 747 F.2d 863 (3d Cir. 1984) and, in

sum, concluded that Plaintiff's repeated, willful, and deliberate disregard for Court Orders and other discovery obligations, without explanation, unfairly prejudiced Defendant by prohibiting it to prepare its case. After carefully considering the Poulis factors, Judge Falk concluded a majority of them weighed heavily in favor of dismissal. Therefore, this Court agrees with Judge Falk's Report and Recommendation in its entirety.

CONCLUSION

Based on the foregoing, Judge Falk's Report and Recommendation granting Defendant's motion to dismiss pursuant to Rule 78 of the Federal Rules of Civil Procedure is hereby **adopted** and **affirmed**. Accordingly, Defendant's motion to dismiss Plaintiff's Complaint with prejudice is **granted**.

SO ORDERED.

S/
DENNIS M. CAVANAUGH, U.S.D.J.

Original: Clerk
Copies: Hon. Mark Falk, U.S.M.J.
All counsel of record
File